

ARTICLE VI*

PROCEDURES

SECTION 6.01 Proceedings Before The Commissioner. (a) The Commissioner may, on his own motion, investigate or make inquiry in a manner to be determined by him, as to any condition affecting the public sewer system and as to any alleged act or omission of failure to comply with any provision of these Rules and Regulations and any permit, order or determination issued thereunder.

(b) Whenever it shall appear to the Commissioner, after investigation, that there has been violation of any of the provisions of these Rules and Regulations or any permit issued thereunder, he shall give written notice to the alleged violator or violators setting forth any thing or act done or omitted to be done or claimed to be in violation of any such provisions, and requiring that the matters complained of being corrected, or that the alleged violator appear in person or by attorney before the Commissioner or his duly designated representative, at the time and place in said notice specified, and answer the charges complained of.

(c) At least fifteen days (15) notice of such hearing shall be given.

(d) Upon the return day of such notice the person so notified shall file with the Commissioner a statement setting forth the position of the person so notified, the answer, if any, to the charges made against him, the methods, practices and procedures, if any, which are being taken to correct each alleged violation, and any other defenses or information pertinent to the case. Pertinent and relevant testimony of witnesses shall be received in support of or opposition to said statement.

(e) Following a hearing and after due consideration of the written and oral statements, and testimony and arguments filed pursuant to subdivision (d) above, or on default in appearance on said return day, the Commissioner may issue and enter such final order or make such final determination as he deems appropriate under the circumstances, and shall notify such person or persons thereof in writing, personally, or by registered mail.

SECTION 6.02 Hearing; Notice and Procedure. (a) The Commissioner, or any person designated by him for this purpose, may issue subpoenas and administer oaths in connection with any hearing or investigation under or pursuant to the provisions of this article, and it shall be the duty of the Commissioner and any persons designated by him for such purpose to issue subpoenas at the request of and upon behalf of the respondent.

(b) The Commissioner and those designated by him shall not be bound by laws of evidence in the conduct of hearing proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it.

(c) Notice of hearing shall be served at least fifteen (15) days prior to the date of the hearing, provided that, whenever because of danger to the public

health, safety or welfare, it appears prejudicial to the public interest to delay action for fifteen (15) days, the Commissioner may serve the respondent with an order requiring certain action or the cessation of certain activities immediately or within a specified period of less than fifteen (15) days and the Commissioner shall provide an opportunity to be heard within fifteen (15) days after the date the order is served.

(d) Service of notice of hearing or order shall be made by personal service or by registered or certified mail. Where service, whether by personal service or by registered or certified mail, is made upon an infant, incompetent, partnership, corporation, governmental subdivision, board or commission, it shall be made upon the person or persons designated to receive personal service by Article 3 of the Civil Practice Law and Rules.

(e) The County Attorney may prefer charges, attend hearings, present the facts, and take any and all proceedings in connection therewith.

(f) At a hearing, the respondent may appear personally, shall have the right of counsel, and may cross-examine witnesses against him and produce evidence and witnesses in his behalf.

(g) A record, or summary thereof, of the proceedings of said hearings shall be made and filed with the department. If requested to do so by any interested party concerned with said hearing, the full stenographic notes of the testimony presented at said hearing shall be taken and filed. The stenographer shall, upon the payment of his fees allowed by law, therefore, furnish a certificate transcript of the whole or any part of his notes to any party to the action requiring the same.

(h) Unless precluded by law, disposition may be made of any hearing by stipulation, agreed settlement, consent order, default, or other informal method. Within ten (10) days of the notice specified in Section 6.02(b) the user may request a prehearing conference with the Commissioner's representative for an informal disposition of any or all charges.

(i) Upon request made by any party upon the department within a reasonable time, but prior to the time for commencement of judicial review, of its giving notice of its decision, determination, opinion or order, the agency shall prepare the record together with any transcript of proceedings within a reasonable time and shall furnish a copy of the record and transcript or any part thereof to any party as he may request. Except when any law provides otherwise, the department is authorized to charge not more than its cost for the preparation and furnishings of such record or transcript or any part thereof, or the rate specified in the contract between the agency and a contractor if prepared by a private contractor.

(j) Upon application of any affected user the Commissioner may modify or amend any determination after a hearing.

*Local Law No. 3 enacted by the Onondaga County Legislature of the County of Onondaga, New York on the 5th day of July, 1983 and filed with the New York State Department of State, Bureau of State Records on the 11th day of August, 1983.